IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 330 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESHBHAI V SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 330 of 1993
MR DEEPAK M SHAH for Petitioner No. 1
THROUGH JAIL for Petitioner No. 1
Mr K P Raval, APP for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE D.P.BUCH

Date of decision: 24/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.P.BUCH)

This is an appeal by the accused persons under section 374 of the Code of Criminal Procedure, 1973 against the judgment and conviction order recorded on 5.12.1992 by the learned Addl.Sessions Judge, Kheda, Nadiad, convicting the present appellant for offence punishable under section 302 of IPC and sentencing him to suffer life imprisonment and to pay fine of Rs.1000/-. The appellant was directed to further undergo R.I. for one month, in case the fine is not paid. The said conviction was recorded in Sessions Case No.21/91 by the learned Addl.Sessions Judge. The facts of the case of the prosecution before the trial court was that deceased Shardaben was wife of informant Dayaram. They were residing in the neighbourhood. The deceased was attending to household work and she also used to go for labour work as and when she got such work. At times, she also used to go for labour work along with the deceased. It appears that deceased Shardaben had some relation with the appellant and the informant Dayaram had some doubt about the conduct of the two. It seems that the informant had told about the same to his wife deceased Shardaben and thereafter, deceased Shardaben did not wish to continue the old relation with the appellant. It also appears that the appellant insisted that deceased Shardaben should continue the old relation with him. Therefore, there was some quarrel between deceased Shardaben and the appellant and in the process, the appellant is alleged to have committed murder of deceased Shardaben.

2. According to the case of the prosecution, the incident took place on 24.9.1990 at about 4 p.m. Prior to it, the present appellant is alleged to have knocked at the door of the informant Dayaram in the early hours of the day. However, the informant Dayaram and his mother both were present and when the informant opened the door, the appellant could see that the informant, his mother and deceased Shardaben all were present there and, therefore, the appellant ran away from the spot. Thereafter, the informant informed his elder brother Rameshbhai about the aforesaid event and, therefore, Rameshbhai had rebuked the present appellant. It seems that because of the said event, the appellant got angry and committed the offence in question. The prosecution has alleged that at about 4 p.m. on the date of the incident, the informant was at his home. At that time, deceased Shardaben was cleaning vessels outside the

residence. At that time, the appellant came there and dealt knife blows on the person of deceased Shardaben. On hearing the shouts of the deceased, the informant and his mother both had reached the spot outside the residence. They saw the appellant giving knife blow on the person of the deceased. They also saw the appellant running away from the spot after causing knife injuries to deceased Shardaben. Thereafter, the informant took the deceased to hospital first and thereafter FIR was filed. The police investigated the case and ultimately it was found that the appellant had committed the said offence and there was prima facie material to file charge sheet against the appellant. Police Investigating Officer ultimately filed charge sheet against the appellant at the conclusion of the investigation. The learned Magistrate found that the offence punishable under section 302 of IPC was exclusively triable by a court of Sessions and, therefore, the case was committed to the said Court. The learned Addl.Sessions Judge supplied copies of police investigation papers to the appellant. Charge at Exh.2 was prepared and framed against the appellant. The appellant pleaded not guilty to the said charge and, therefore, the learned Judge proceeded to record evidence against the appellant. At the conclusion of the evidence, the learned Addl.Sessions Judge recorded further statement of the appellant under section 313 of the Code. After hearing the argument, the learned Judge found that the present appellant was guilty for the offence under section 302 of IPC and, therefore, he inflicted the aforesaid punishment after hearing the appellant on the quantum of punishment.

3. Feeling aggrieved by the said judgment and conviction order of the learned Judge, the appellant has preferred this appeal before this Court. It has been mainly contended here that there was no material or evidence before the trial court to convict the appellant. That the learned Judge has not properly appreciated the evidence on record. That in fact even the informant had not seen the incident in question and he was unable to name the appellant and yet the appellant has been falsely involved in the case. That on the whole, the judgment and conviction order recorded by the learned Judge are illegal and erroneous and deserve to be set aside. The appellant, therefore, prays that the present appeal be allowed, the judgment and conviction order be set aside, the appellant be acquitted of the aforesaid charge and he be set at liberty forthwith.

4. On receiving the appeal, it was ordered to be

admitted but bail was refused.

5. Mr Deepak M Shah was appointed to represent as Counsel of the appellant in this appeal. Accordingly, he argued the matter on behalf of the appellant. Learned APP, Mr K P Raval argued the matter on behalf of the respondent. In fact, they have taken us through the evidence, both oral and documentary, as well as the findings recorded by the learned Judge and the reasons for arriving at the said findings recorded by the learned Judge.

6. If we look at the evidence before us, we can find the evidence of informant Dayaram at Exh.10. He is the informant and husband of the deceased. He has clearly deposed in his evidence that the incident took place at about 4 p.m. on 24.9.1990 and at that time, the deceased dealt with knife blows on the person of his wife Shardaben, who was cleaning vessel outside the residence. He has also given details about the incident which took place on the previous day when the appellant knocked at the door and on seeing the witness, his mother and the deceased, he ran away from the spot.

7. So this witness has clearly supported the case of the prosecution. He has given details as to how the injuries were sustained by his deceased wife. At the same time, he is very clear on the point that he could not identify the muddamal knife which was shown to him because the appellant ran away after causing injuries to the deceased.

8. This shows that his evidence is quite genuine. If he wanted to add something, he could have identified the muddamal knife as a weapon used for causing injuries to the deceased. Efforts were made to show that the witness was required to attend his duty at the time of the offence. That suggestion was negatived and there is no material to show that the witness was away on duty at the time when the incident took place. The witness has been cross examined at great length. Nothing fruitful has been derived from the lengthy cross examination. It is true that there are some minor contradictions between his oral testimony and FIR but it is also a fact that the incident took place in September, 1990. The evidence was taken in April, 1992 and, therefore, even on account of passage of time, there will be some discrepancy between his oral testimony and the statement made in the FIR. But the contradictions are not on material particulars and it is not possible to hold that the witness has improved his story against the appellant. Then we can

turn to another witness Morarbhai Exh.17, who is a panch witness to the discovery panchnama, under which the appellant discovered the muddamal knife. This panch witness has clearly supported the prosecution and proved the discovery. The discovery panchnama has been produced on record Exh.19.

9. Then there is evidence of P.W. 4-Chanchalben Exh.20. She is the mother of informant Dayaram. She is a witness to the incident. Naturally, when the incident took place just outside the residence, her presence in the residence is quite natural. The incident took place at 4 p.m. and therefore, also she would naturally be present at the house. She is shown to be 60 years of age at the time when her evidence was recorded. This shows that even looking to her age, she would naturally be at home at 4 p.m. She also stated that the appellant gave knife blows on the deceased when the deceased was cleaning vessel just outside the residence. She has clearly supported the evidence of her son Dayaram. This witness has also been cross-examined at length but nothing fruitful has been derived from the lengthy cross examination. This shows that the mother and the son, both have stood the test of cross examination and their evidence has not been shaken to any extent despite the fact that both have been cross examined at great length. It is also required to be considered that these are the two witnesses who are doing labour work in general and agricultural labour work in particular. Looking to the society from which they come, it appears that they are not fully literate and, therefore, there would be some discrepancy between their statements and their evidence but here also contradictions are not material and important and it cannot be said that she has made improvements in her case for falsely implicating the present appellant in a serious case of murder. The third eye witness Ranjanben Exh.22 has also given similar version and has stated that the deceased was injured by the appellant and on account of the said injuries, the deceased died after she was admitted in the hospital. This witness was also cross examined on behalf of the defence. Here also nothing fruitful has been derived from her lengthy cross examination.

10. Then comes an important piece of evidence in the form of PW 7 Hirabhai Exh.23. At the relevant time he was working as Dy.Mamlatdar and Executive Magistrate. He received police yadi on 24.9.1990 at 5.30 p.m. for recording dying declaration of the deceased. He went to the Primary Health Centre at Khambhat. But it was noticed that the deceased was not there and, therefore,

he returned the police yadi. In the said evidence the witness has further stated that it was learnt that the deceased was shifted to the General Hospital at Khambhat and the witness was informed about the same on 25.9.1990 and, therefore, he went to the said hospital and had approached the doctor and at that time the deceased, according to the opinion of the Doctor, was not conscious. The Doctor had told the witness to enquire at about 3 p.m. and, therefore, the witness went back from the hospital at about 11 a.m and again came back to the hospital at 3 p.m. The witness has deposed that at that time, the deceased was conscious and, therefore, he recorded dying declaration of the deceased. He has also deposed that the dying declaration was recorded in accordance with the statement given by the deceased and in accordance with the statement made by her before him. He has further stated that at the close of the statement it was noticed that the right hand of the deceased was bandaged as glucose was being administered to her and therefore, signature of the deceased was not obtained below the dying declaration and even right hand thumb mark was not also not obtained on the same reason. At the same time, the witness has also deposed that in view of the above position, the left hand thumb mark of the deceased was obtained on the said dying declaration. The witness has produced the said dying declaration at Exh.26.

11. The dying declaration shows that at initial stage there is a reference to the previous day's incident of 23.9.1990, under which there was some quarrel. Then she says that the appellant had thrown some stones. Thereafter she proceeded to say that on 24.9.1990, which was a Monday, at about 14.30 hours, the appellant rushed to the place where she was working. That the appellant dealt knife blows on her and, therefore, she had become unconscious and had fallen down on the ground. That, she did not know what had happened thereafter and she also did not know as to who took her to the hospital. She has further stated that at the relevant point of time, she was cleaning the vessel. At the bottom of the said statement, a note has been made by the learned Executive Magistrate that glucose was being administered and there was a bandage on the hand and, therefore, signature or right hand thumb mark of the deceased were not obtained but her left hand thumb was obtained below the said statement. The statement was completed at 15.30 hours on 25.9.1990. This witness has also been cross examined on behalf of the appellant. However, nothing fruitful has been derived from the lengthy cross examination of this witness. The dying declaration Exh.26 amply corroborates

the evidence tendered by Dayaram, Chanchalben and Ranjanben at Exhs. 10, 21 and 22 respectively. The learned Judge has relied upon this piece of evidence and has also given cogent reason for depending upon the evidence of these three witnesses.

12. This shows that the dying declaration supports the evidence of the three eye witnesses but there is no material contradiction between the evidence of these three witnesses as well as the evidence in the form of dying declaration. It is very clear that the dying declaration alone can also form the basis for the conviction of an accused person. Here the facts are different. The dying declaration is supported by oral evidence at least of three eye witnesses. The said evidence is further supported by medical evidence tendered by Dr.Sachdev at exh.8. Another medical witness Dr.Sandeep Exh.33 has carried out the post mortem of the dead body of the deceased and his evidence also supports the evidence of the aforesaid eye witnesses coupled with the evidence of dying declaration.

13. The defence has examined Dr. R M Zala as a defence witness as Exh.55. This witness has tried to show that the injury in question could not be caused by the weapon which is muddamal article before the Court. Even if we take it that the injuries on the person of the deceased could not have been caused by the weapon produced as muddamal article in the present case, the matter would not take a different shape. It may be that the injuries may have been caused by some weapon other than the muddamal weapon.

14. The witness has also stated that death was not possible by the injury to the lungs of the deceased. However, during the entire examination, this witness, who has been cited as an expert witnesses, has not been able to say as to what was the cause of the death of the deceased. At the same time, an attempt was made from his evidence to show that if proper treatment has not been extended, then, some additional complications were likely to arise. At the same time, the witness also deposed that if there is accumulation of blood in the lungs, then it would bring pressure on the heart and if the pressure is excessive, the injured may die. In the present case, the evidence is that the blood had accumulated in the lungs and, therefore, even according to the evidence of this defence witness, the deceased may have died because of the pressure by blood accumulated in the lungs. This witness has tried to show that there was no blood collected there. But at the same time, he has agreed

that the blood could be drained out by means of tube. It is quite possible that the blood may have been drained out to reduce the pressure on the heart of the deceased, but in the meantime, the pressure may have already mounted and done its job.

15. The witness has himself stated in para 8 of the evidence that appropriate treatment was extended to the deceased and a tube was inserted into the chest of the deceased to drain out blood. This further shows that the blood was drained out but at the same time, pressure on the heart played its role and caused the death of the deceased. Therefore, it cannot be stated that there is no case against the appellant.

16. The learned Judge has taken into consideration all the relevant evidence and has given cogent reasons for acceptance of the prosecution evidence. The evidence on record really shows that each piece of evidence corroborates the remaining piece of evidence. The eye witnesses have supported the evidence of one another and their evidence is supported by the medical evidence. Even the circumstance shows that the blood was found on the ground just outside the residence of the informant and the deceased. This further shows that it was the place at which the incident took place. There is, therefore, sufficient evidence to show that the deceased was injured by the appellant and the appellant has intentionally caused the murder of the deceased. Looking to the nature of the injuries sustained by the deceased, it is to be seen that those injuries were sufficient in ordinary course, to cause death and, therefore, the provision made in section 300 clause III of IPC will come into play and once the said provision comes into play, it is extremely clear that the appellant intentionally committed the murder of the deceased. Looking to the previous history, it has to be held that the appellant had intention to kill the deceased. No other inference can be drawn from the facts of the case. In other words, the appellant intended to cause the injury which has been caused by him and the injury which has been caused was intended to be caused by the appellant to the deceased. In that view of the matter, it is a clear case of intentional murder of the deceased. There is some evidence about the motive behind the commission of the offence also which further supports the case of the prosecution.

17. In above view of the matter, we are of the opinion that there is sufficient material to hold that the appellant had committed murder of deceased Shardaben and thereby committed offence under section 302 of IPC. The learned Judge has given cogent and sound reasons for accepting the evidence on record and for convicting the appellant for the aforesaid offence. Since we are in general agreement with the findings and reasonings recorded by the learned Judge, it is not necessary for us to reiterate the same reasonings and findings and detailed reasons are not required. However, since the matter has been argued before us at length, we find it proper to give brief reasons for concurring with the reasonings and findings of the learned Judge inspite of the decision recorded in the case of State v. Mansukhlal Lovchand Choksi, reported in 1993 (2) GLH 849.

18. For the foregoing reasons, we find no merit in the appeal and, therefore, the present appeal deserves to be dismissed. The appeal is accordingly ordered to be dismissed. The judgment and conviction order recorded by the learned Judge are hereby confirmed.

24.12.2001 [B J Shethna, J.]

[D P Buch, J.]

msp